



Historic Preservation Review Section 106 of the National Historic Preservation Act

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HUD Environmental Training Seminar
Corona

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Section 106 for the Uninitiated, Agitated, and Under informed



Overview of Section 106

- Section 106 of the National Historic Preservation Act requires all federal agencies to take into account the effects of their undertakings on historic properties.
- Section 106 is “triggered” by federal involvement; it is not by the presence of historic properties.

Best Ways to Slow Down the Section 106 Process

Call the SHPO for assistance and then admit you’ve never seen, **much less read** the Section 106 regulations
Call the SHPO and state that you want a “SHPO letter”

Are You a Federal Agency?

- Responsible Party defined by 24 CFR Part 58
 - State agency
 - Tribal government
 - City or County government
 - Housing authority
- Acts on behalf of HUD under Section 106
- Becomes the “agency official” in Section 106 consultation

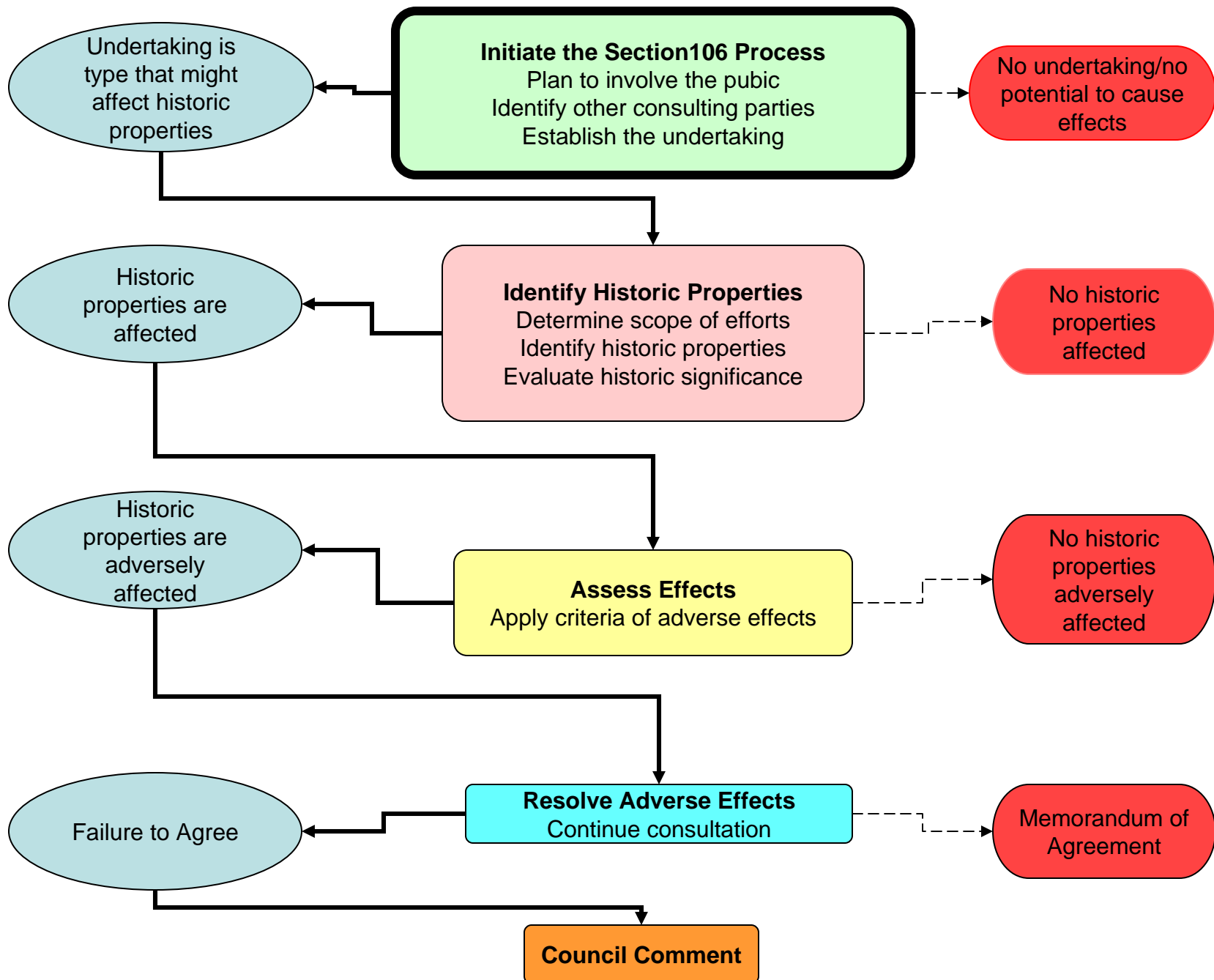
Project Planning

- Section 106 is:
 - Planning tool
 - Early in the planning process



Section 106 and NEPA

- Section 106 and NEPA are not the same
- Section 106 **first** and then NEPA
- “Categorically excluded” projects under NEPA are not exempt from Section 106 review



Initiate the Section 106 Process

- Purpose
 - *Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. (36 CFR 800.1(a))*

Initiate the Section 106 Process

- What is an “undertaking?”

“Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.” [36 CFR § 800.16(y)]

Initiate the Section 106 Process

- Establish the undertaking.
 - *The agency official shall determine whether the proposed Federal action is an undertaking as defined in Sec.800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties [36 CFR § 800.3(a)]*

Initiate the Section 106 Process

- Establish the Undertaking
 - The determination of whether or not an undertaking exists is the Agency Official's decision.
 - That determination is based on the nature of the federal action, not whether or not you believe a historic property is involved.
 - Have you considered the entire scope of the project, even if parts do not have direct federal involvement?
 - **The agency official is in the driver's seat but make sure your action/decision is defensible**

Initiate the Section 106 Process

- Do you have an “undertaking?”
 - What about
 - Rehabilitation of single family residence?
 - Hiring administrator for senior lunch program?
 - Purchase of new kitchen equipment?
 - What if the kitchen equipment is part of a building rehabilitation?

Initiate the Section 106 Process

- Who are the participants?
 - Agency Official
 - Local government official under 24 CFR Part 58
 - Use of Secretary of the Interior's Standards
 - Use of National Register of Historic Places criteria
 - Use of contractors
 - Responsible for consultation

Initiate the Section 106 Process

Use of Contractors

“ . . . The agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.”
[36 CFR § 800.2(a)(3)]

Best Ways to Slow Down the Section 106 Process

Hire a consultant who hasn't got a clue about historic preservation
and expects SHPO staff to provide hands-on training

Initiate the Section 106 Process

- Who are the participants?
 - Advisory Council on Historic Preservation
 - Responsible for promulgating Section 106 regulations
 - Responsible for advising federal agencies
 - Including local governments when they are the agency official

Initiate the Section 106 Process

- Who are the other participants?
 - Consulting Parties
 - State Historic Preservation Officer/Tribal Historic Preservation Officer (mandatory)
 - Indian Tribes/Native Hawaiians
 - Representatives of local governments
 - Applicants for federal assistance, permits, licenses and other approvals
 - Individuals and organizations with a direct interest in the project—legal, economic, concern about effects
 - Public

Initiate the Section 106 Process

- Role of the State Historic Preservation Officer (SHPO) and staff
 - Mandatory consulting party
 - Peer review
 - Liaison
 - Guidance on Section 106

Initiate the Section 106 Process

Role of SHPO – **What we do not do**

- Research, identify historic properties, or determine project effects
- Have a complete list of all historic properties within the State
- Conduct site visits for every project
- Cannot stop projects

Initiate the Section 106 Process

- Role of the Agency Official
 - Determine if there is an undertaking
 - Consult with interested parties
 - Define area of potential effects (APE)
 - Identify historic properties
 - Assess effect(s)
 - Consult with SHPO

Initiate the Section 106 Process

- Role of Agency Official
 - Have a plan to involve the consulting parties and the public
 - Can be informal, general, ongoing programmatic approach
 - Can be formal and project specific
 - Can use your historic preservation commission

Initiate the Section 106 Process

- Timing
 - The agency official must complete the Section 106 process “prior to the approval of the expenditure of any Federal funds on the undertakings or prior to the issuance of any license.”

Best Ways to Slow Down the Section 106 Process

Begin your project, **and then** contact the SHPO

Call or email that you must have the SHPO's response **Immediately**, otherwise the City will lose a million dollars

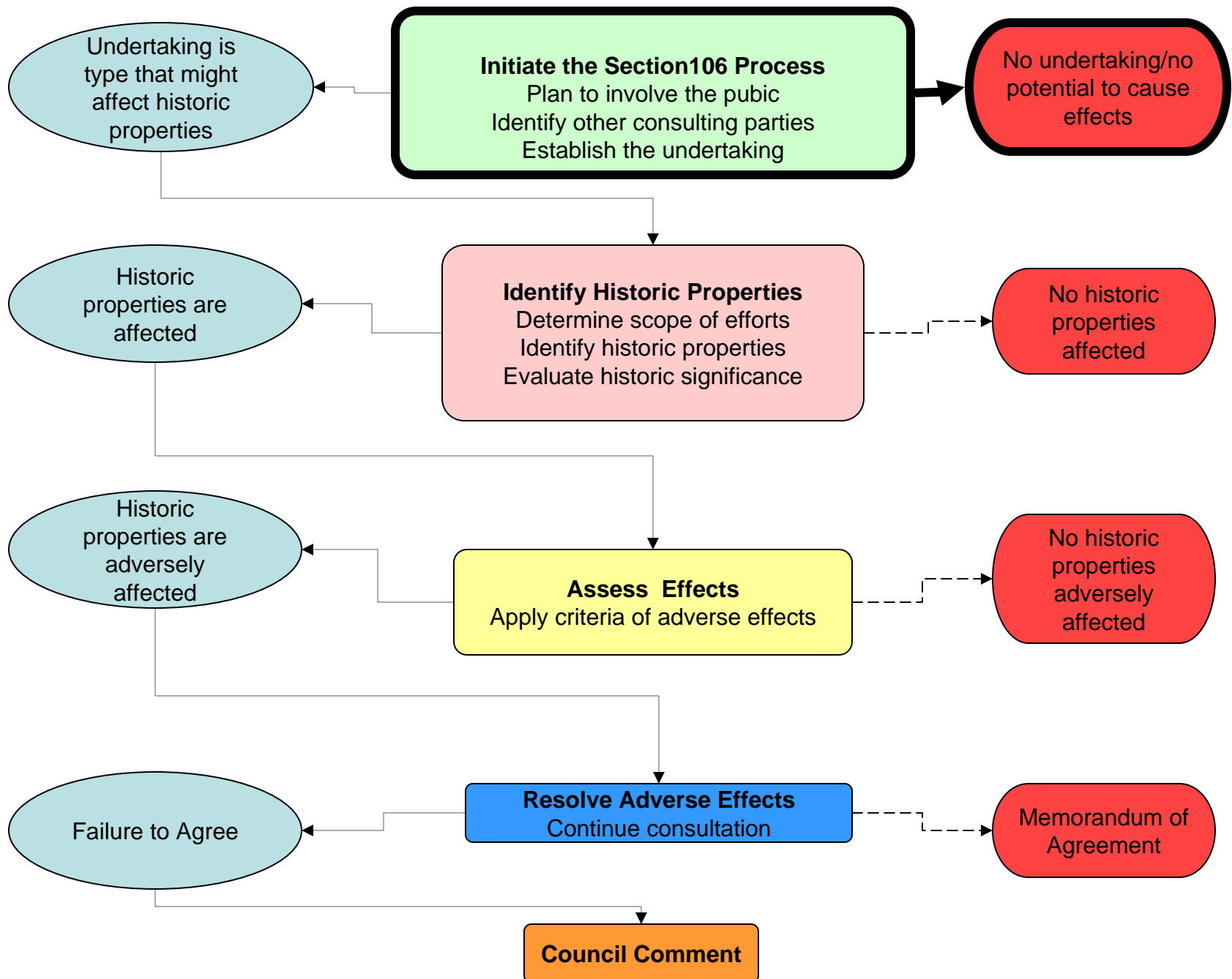
Initiate the Section 106 Process

If the agency official determines there is no undertaking, or

If there is an undertaking but it is not the type of activity that has the potential to cause effects on historic properties, then

That concludes the Section 106 review

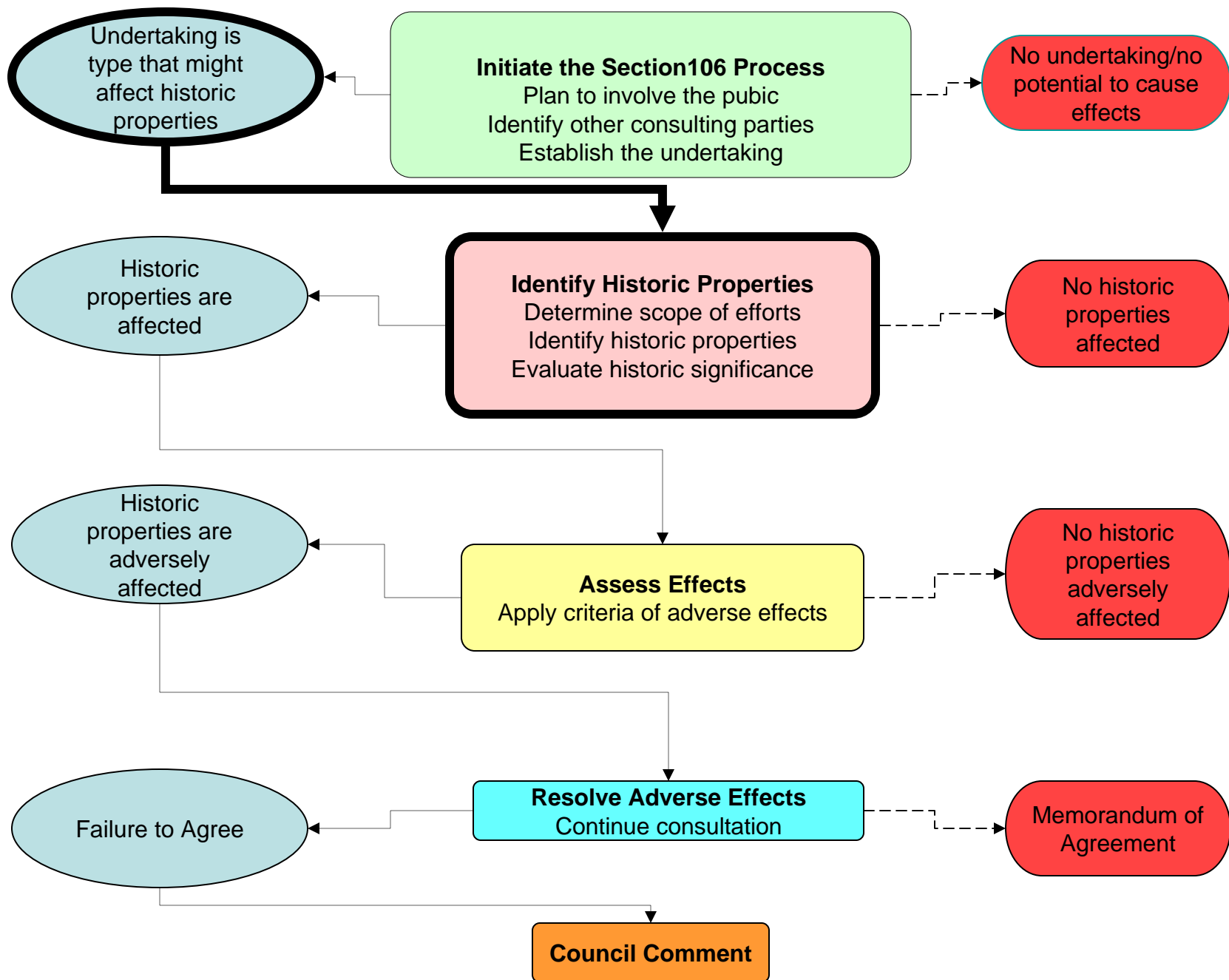
Advice: Keep appropriate records



Initiate the Section 106 Process

If the Agency official has determined that the undertaking is the type of activity that has the potential to cause effects on historic properties, then

The agency proceeds to identify historic properties that might be affected



Identify Historic Properties

The step known as “identification” includes

- Defining the area of potential effects (APE)
- Actual efforts to identify potential historic properties within the APE
- Evaluation of identified properties to determine if they are “historic” or significant

Best Ways to Slow Down the Section 106 Process

Write the SHPO and ask “Please tell us what you think.”

Identify Historic Properties

- In consultation with the SHPO, determine the scope of efforts to
 - Determine and document the **area of potential effects (APE)**
 - Area directly or indirectly **potentially affected** by the action
 - Determined by nature of the undertaking. It is not determined by whether or not you think historic properties are nearby

Identify Historic Properties

Defining the APE--What to Consider

- Direct effects
- Visual effects
- Audible effects
- Socio-cultural effects
- Indirect or secondary effects

Identify Historic Properties

- How would you define the APE?
 - Rehabilitation of single family house
 - Construction of strip mall
 - Construction of curb cuts

Identify Historic Properties

Defining the APE—What the SHPO Needs

- Complete description of the undertaking
 - Will there be ground disturbance?
 - Physical parameters—height, depth, width, length
- How did you choose your boundaries?
- Support documents
 - Maps
 - Drawings
 - Photographs

Identify Historic Properties

A historic property is defined as

“any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places.” (36 CFR § 800.16)

Identify Historic Properties

- The standard for adequate identification is a “reasonable and good faith effort” to identify history properties.

Identify Historic Properties

Reasonable & Good Faith Effort



- Review existing data
 - Information Centers
 - Planning Department
 - Preservation Commissions
- Background research
- Consultation
- Oral History
- Field survey

Identify Historic Properties

- In consultation with the SHPO, determine the scope of efforts to
 - Review existing information about historic properties within the APE, **including any data concerning possible historic properties not yet identified.**

Best Ways to Slow Down the Section 106 Process

Refuse to consider archeological properties because this is a urban area, or because the area has been under cultivation, or you can't see any archeological properties

(Of course you can't see them, that's why we rely on our regional Information Centers to provide professional advice.)

Identify Historic Properties

California Historical Resources Information System (CHRIS)

- Eleven regional information centers
 - Information about the built environment
 - Information about archeological properties
 - (some information is confidential with limited access to non-professionals)

http://ohp.parks.ca.gov/?page_id=1068

Identify Historic Properties

- In consultation with the SHPO, determine the scope of efforts to
 - Seek information from parties likely to have knowledge or for concerns about the area

Best Ways to Slow Down the Section 106 Process

Fail to contact staff in your own local government that are responsible for planning and/or historic preservation

Identify Historic Properties

- In consultation with the SHPO, determine the scope of efforts to
 - Gather information from Indian tribes and Native Hawaii organizations about properties to which they attach religious and cultural significance, while remaining sensitive to any concerns they may have about the confidentiality of this information

Identify Historic Properties

California Native American Heritage Commission

The Mission of the Native American Heritage Commission is to provide protection to Native American burials from vandalism and inadvertent destruction, provide a procedure for the notification of most likely descendants regarding the discovery of Native American human remains and associated grave goods, bring legal action to prevent severe and irreparable damage to sacred shrines, ceremonial sites, sanctified cemeteries and place of worship on public property, and maintain an inventory of sacred places.

<http://www.nahc.ca.gov/>

Identify Historic Properties

- Phased identification
 - Large land areas
 - Access to properties is restricted
 - Nature of the undertaking and its potential scope and effect have not yet been completely defined
- Agency official required to follow up once project has been refined or access to property has been gained.

Identify Historic Properties

- Evaluate Historical Significance
 - Just because it is old, doesn't mean it is significant!
 - Apply the National Register criteria to properties identified within the APE

Best Way to Slow Down the Section 106 Process

The property is not on your local register, therefore, it is not a historic property.

Ask the SHPO to determine for you if the property is eligible for the National Register.

- Old determinations of eligibility may need to be re-evaluated due to passage of time or other factors

Identify Historic Properties

What the SHPO Needs for Review

- Photographs
- Construction dates
- CHRIS record search
- Cultural Resource Reports/Surveys
- Drawings
- DPR 523s
- Maps

Identify Historic Properties

State of California -- The Resources Agency DEPARTMENT OF PARKS AND RECREATION PRIMARY RECORD		Primary # _____ HRI# _____ Trinomial _____ NRHP Status Code _____
Other Listings Review Code _____		Reviewer _____ Date _____
Page _____ of _____ *Resource Name or #: (Assigned by recorder) _____		
P1. Other Identifier: _____		
*P2. Location: <input type="checkbox"/> Not for Publication <input type="checkbox"/> Unrestricted		
a. County _____ and (P2c, P2e, and P2b or P2d. Attach a Location Map as necessary.)		
b. USGS 7.5' Quad _____ Date _____ T _____ R _____ 1/4 of Sec _____ B.M. _____		
c. Address _____ City _____ Zip _____		
d. UTM: (Give more than one for large and/or linear resources) Zone _____ mE/ _____ mN		
e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate)		
*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)		
*P3b. Resource Attributes: (List attributes and codes)		
*P4. Resources Present: <input type="checkbox"/> Building <input type="checkbox"/> Structure <input type="checkbox"/> Object <input type="checkbox"/> Site <input type="checkbox"/> District <input type="checkbox"/> Element of District <input type="checkbox"/> Other (Isolates, etc.)		
P5a. Photograph or Drawing (Photograph required for buildings, structures, and objects.)		P5b. Description of Photo: (view, date, accession #)
		*P6. Date Constructed/Age and Source: <input type="checkbox"/> Historic <input type="checkbox"/> Prehistoric <input type="checkbox"/> Both
		*P7. Owner and Address: _____
		*P8. Recorded by: (Name, affiliation, and address)
		*P9. Date Recorded: _____
*P10. Survey Type: (Describe) _____		
*P11. Report Citation: (Cite survey report and other sources, or enter "none.")		
*Attachments: <input type="checkbox"/> NONE <input type="checkbox"/> Location Map <input type="checkbox"/> Continuation Sheet <input type="checkbox"/> Building, Structure, and Object Record <input type="checkbox"/> Archaeological Record <input type="checkbox"/> District Record <input type="checkbox"/> Linear Feature Record <input type="checkbox"/> Milling Station Record <input type="checkbox"/> Rock Art Record <input type="checkbox"/> Artifact Record <input type="checkbox"/> Photograph Record <input type="checkbox"/> Other (List): _____		
DPR 523A (1/95)		*Required information

State of California -- The Resources Agency DEPARTMENT OF PARKS AND RECREATION BUILDING, STRUCTURE, AND OBJECT RECORD		Primary # _____ HRI # _____
Page _____ of _____		*NRHP Status Code _____
*Resource Name or # (Assigned by recorder) _____		
B1. Historic Name: _____		
B2. Common Name: _____		
B3. Original Use: _____		
B4. Present Use: _____		
*B5. Architectural Style: _____		
*B6. Construction History: (Construction date, alterations, and date of alterations)		
*B7. Moved? No Yes Unknown Date: _____ Original Location: _____		
*B8. Related Features:		
B9a. Architect: _____		b. Builder: _____
*B10. Significance: Theme _____ Area: _____		
Period of Significance: _____ Property Type: _____ Applicable Criteria: _____		
(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.)		
B11. Additional Resource Attributes: (List attributes and codes) _____		
*B12. References:		
B13. Remarks:		Sketch Map with north arrow required.
*B14. Evaluator:		
*Date of Evaluation: _____		(This space reserved for official comments)
DPR 523B (1/95) [ACROBAT WEBDOC Posted 11/98]		*Required information

Identify Historic Properties

- Generally, to be listed or to be eligible for listing, properties must be at least 50 years of age

Identify Historic Properties

- The National Register of Historic Places documents properties significant in our nation's history and prehistory
- Levels of significance
 - Local, state, or national level of significance
 - National Register eligibility does not mean nationally significant

Identify Historic Properties

- National Register of Historic Places
 - a. Associated with events that have made a significant contribution to the broad patterns of our history



Pleasanton

Identify Historic Properties

- National Register of Historic Places
 - b. Associated with the lives of persons significant in our past



Sutter's Fort

Identify Historic Properties

- National Register of Historic Places
 - c. Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction



Gamble House

Identify Historic Properties

- National Register of Historic Places
 - d. Have yielded or may be likely to yield, information important in history or prehistory



Identify Historic Properties

- Sometimes, a single property doesn't seem significant



Pasadena

Identify Historic Properties

- Often, individual properties only take on significance when they are identified as part of a historic district or neighborhood



Bungalow Heaven
National Register District,
Pasadena

Identify Historic Properties

- Is this a significant historic property?



Identify Historic Properties



- Not all historic properties are pretty! You have to understand its historical context.
- This is Locke in the Sacramento Delta. It is considered the most intact rural Chinatown in the United States and it is a National Historic Landmark.

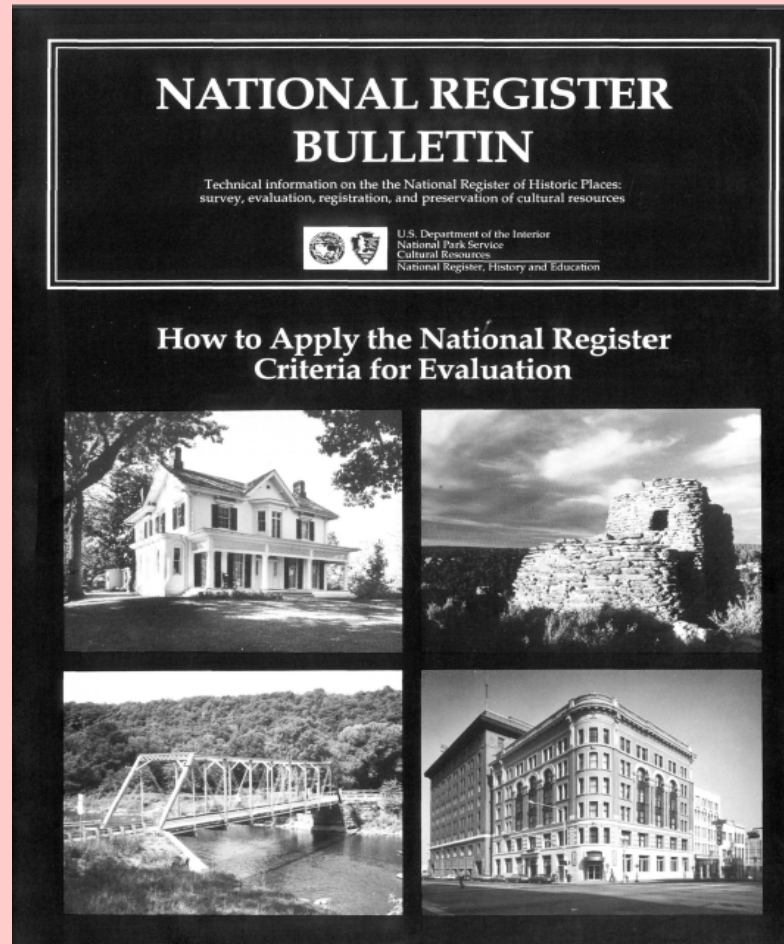
Identify Historic Properties

- Properties must be significant
and
- Properties must have the integrity necessary to convey their historical significance
- Things to look at include
 - Location, design, setting, materials, workmanship, feeling, and association
 - Type of integrity depends on why it is significant

Identify Historic Properties

- Evaluate Historical Significance
 - Acknowledge the expertise of Indian Tribes and Native Hawaii organizations when assessing the eligibility of a property to which they attach religious or cultural significance

Identify Historic Properties



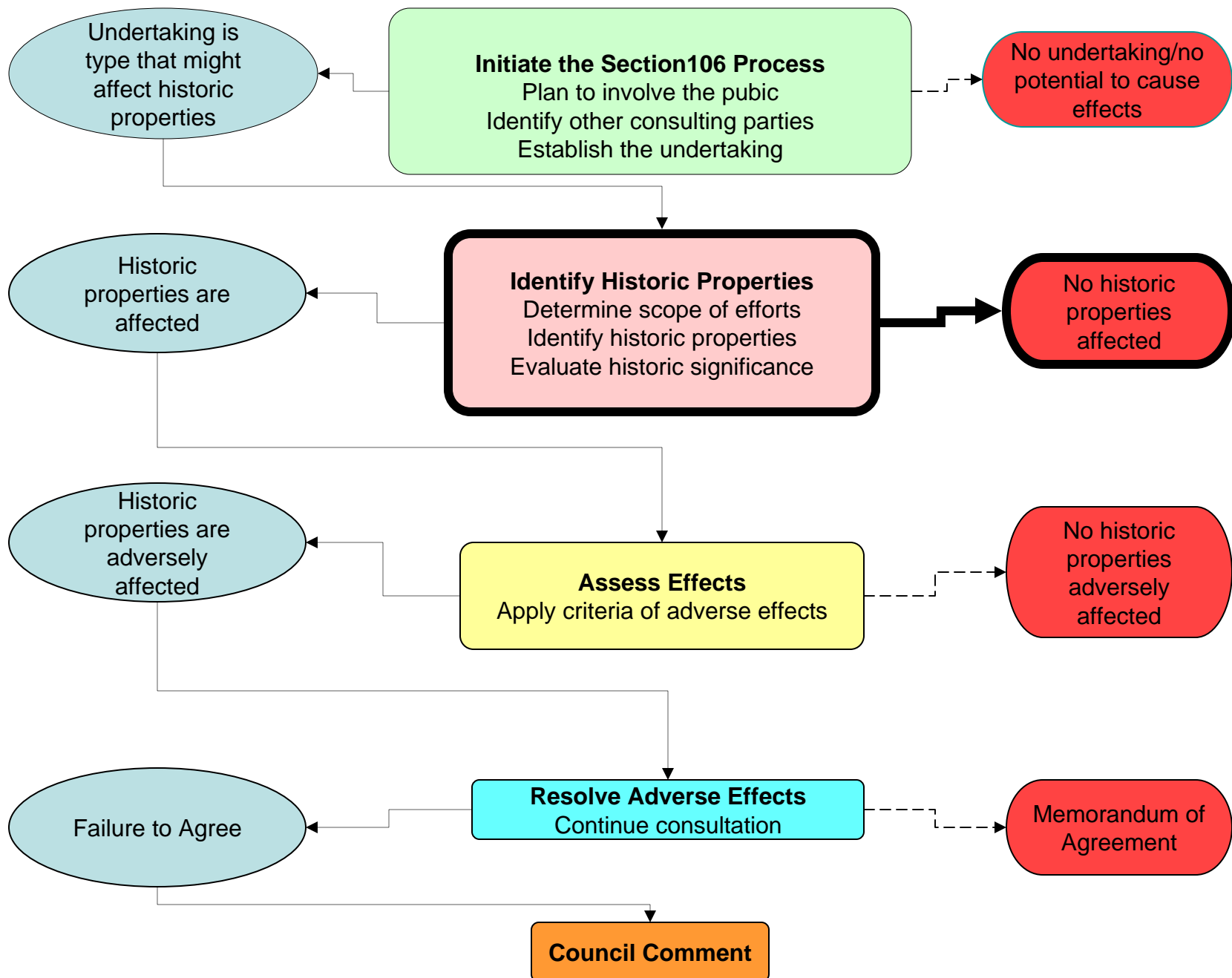
–www.nps.gov/history/nr/publications/bulletins/nrb15

Identify Historic Properties

- Agency official makes a formal determination whether that property does or does not meet the criteria for listing in the National Register
 - Make an affirmative statement-don't ask the SHPO to make the decision
- SHPO reviews and concurs, or not
 - Formal disagreements referred to Keeper of the National Register

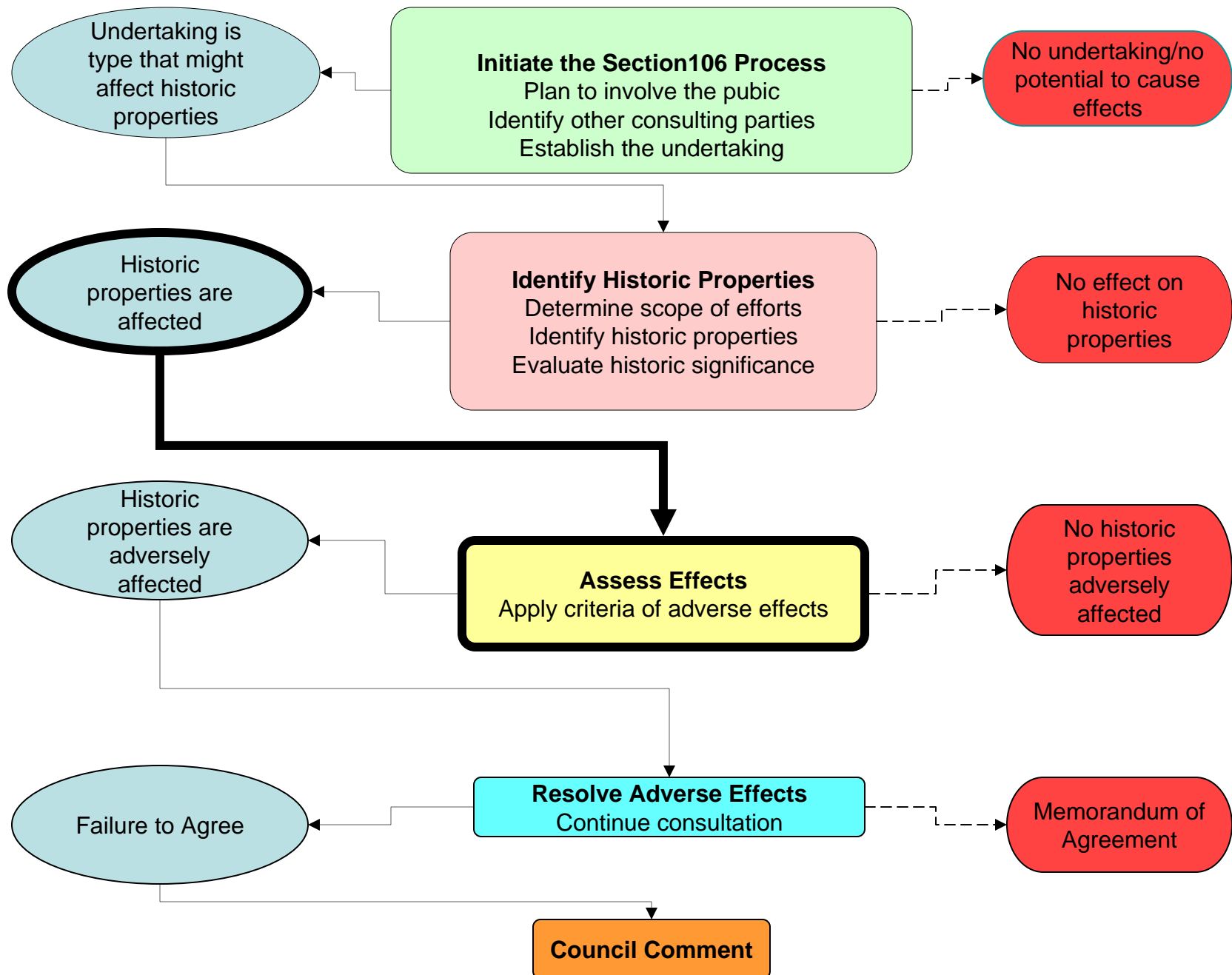
Identify Historic Properties

- If no historic properties are found, or
- If no effects on known historic properties are found, then
- Agency official makes determination that no historic properties are affected
 - Agency official must place documentation in a public file prior to approving the undertaking
 - SHPO has 30 days to object



Identify Historic Properties

- When the agency official finds that historic properties are present and may be affected, or
- The SHPO or ACHP objects to a find of no historic properties affected, then
- The agency official proceeds to the assessment of effects
 - Agency official must notify all consulting parties and invite their views



Assess Effects

- Apply the criteria of adverse effect
- Will the action have an adverse effect on historic properties within the APE?
 - No adverse effect
 - Adverse Effect



Assess Effects

What the SHPO needs to review:

- Narrative
 - Describe effects
 - Reasoning behind your finding of effect
- Alternatives
- Supporting documentation
 - Specifications
 - Photo simulations
 - Maps
 - Drawings

Assess Effects

- The SHPO and Indian tribes/Native Hawaii organizations attaching religious and cultural significance to identified properties, must be consulted when agencies apply the criteria of adverse effect.
- The agency official needs to consider the views of consulting parties and the public.

Assess Effects

- Apply criteria of adverse effects
 - When an undertaking may directly or indirectly alter characteristics of a historic property that qualify it for inclusion in the National Register
 - Reasonable foreseeable effects caused by the undertaking that may occur later in time, be farther removed, or be cumulative also need to be considered.

Assess Effects

- Examples of adverse effects
 - Physical destruction or damage
 - Alteration not consistent with the Secretary of the Interior's *Standards for Rehabilitation*
 - Relocation of a property
 - Change of use or physical features of a property's setting
 - Neglect or abandonment
 - Introduction of visual, atmospheric or audible elements

Assess Effects

- Examples
 - Visual, atmospheric, or audible intrusions
 - Neglect resulting in deterioration
 - Alteration or destruction of an archeological site is an adverse effect, whether or not recovery of archeological data from the site is proposed. ACHP has issued guidance.

Assess Adverse Effects



Inappropriate alterations

Assess Effects

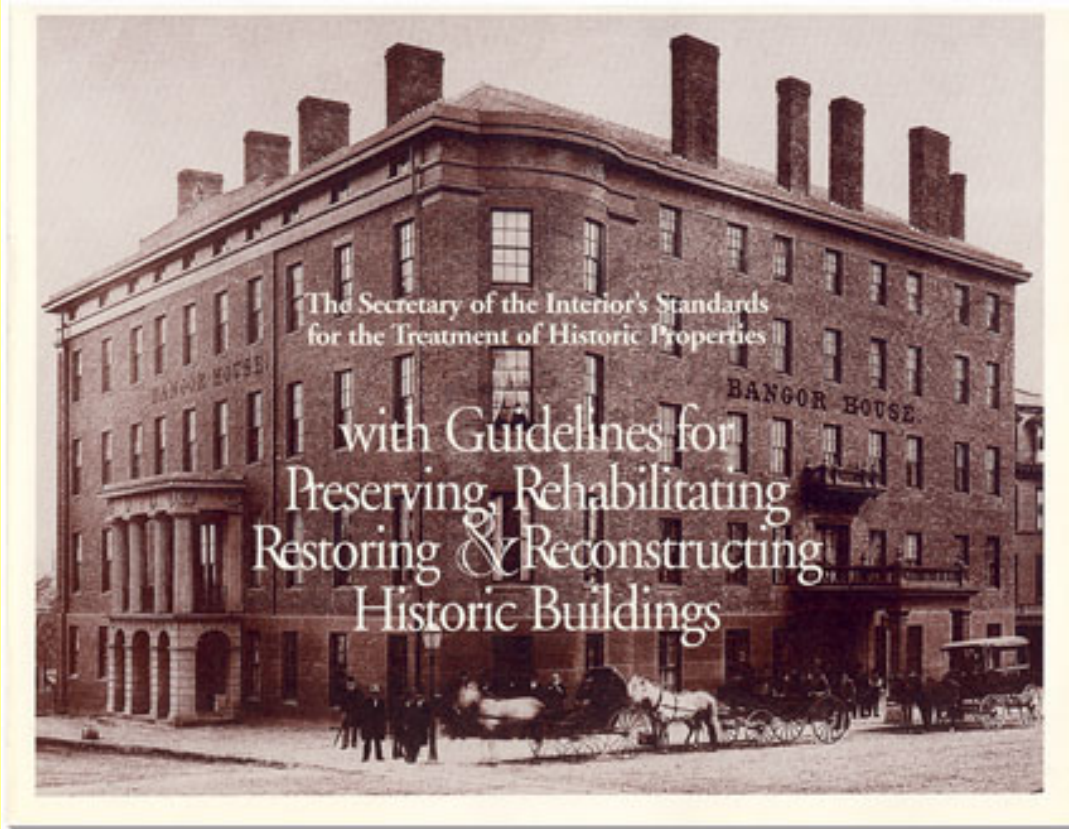
New construction that is out of character with adjacent historic properties



Assess Effects

- No Adverse Effects
 - A property that is restored, rehabilitated, repaired, maintained, stabilized, premeditated, or other changed in accordance with the *Secretary's Standards*
 - Minor changes that do not adversely impact character defining features

Assess Effects



<http://www.nps.gov/hps/tps/Standards/index.htm>

Assess Adverse Effects

No Adverse Effects



Assess Adverse Effects

No Adverse Effects

Appropriate pocket park and street furniture at Locke, a National Historic Landmark District



Assessing Effects

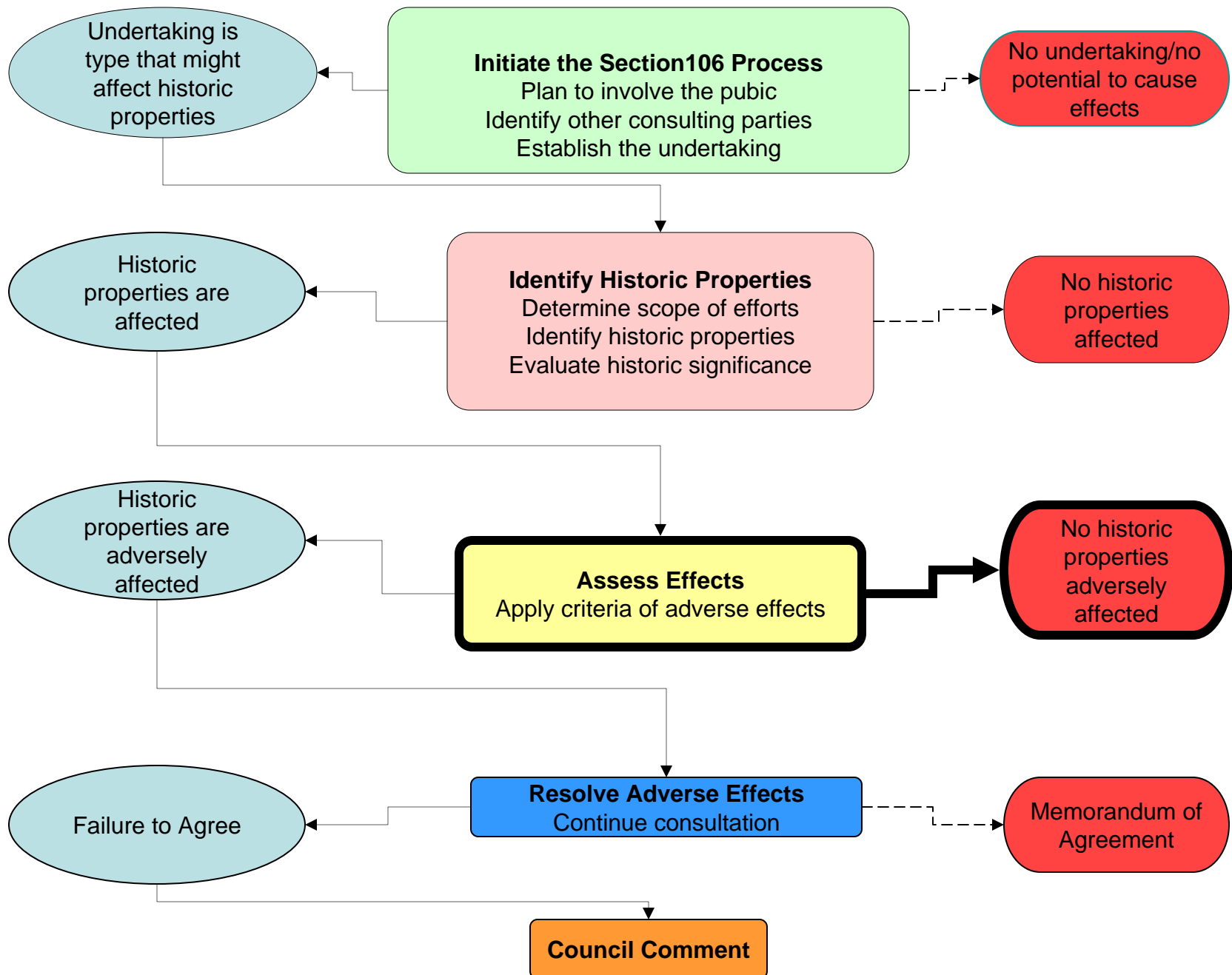
- SHPO may suggest changes in a project or impose conditions so that adverse effects can be avoided and thus result in a no adverse effect determination
 - Conditional no adverse effect

Assessing Adverse Effects

- Advisory Council on Historic Preservation rarely reviews no adverse effect determinations, unless
 - Disagreements by the SHPO or another consulting party

Assessing Adverse Effects

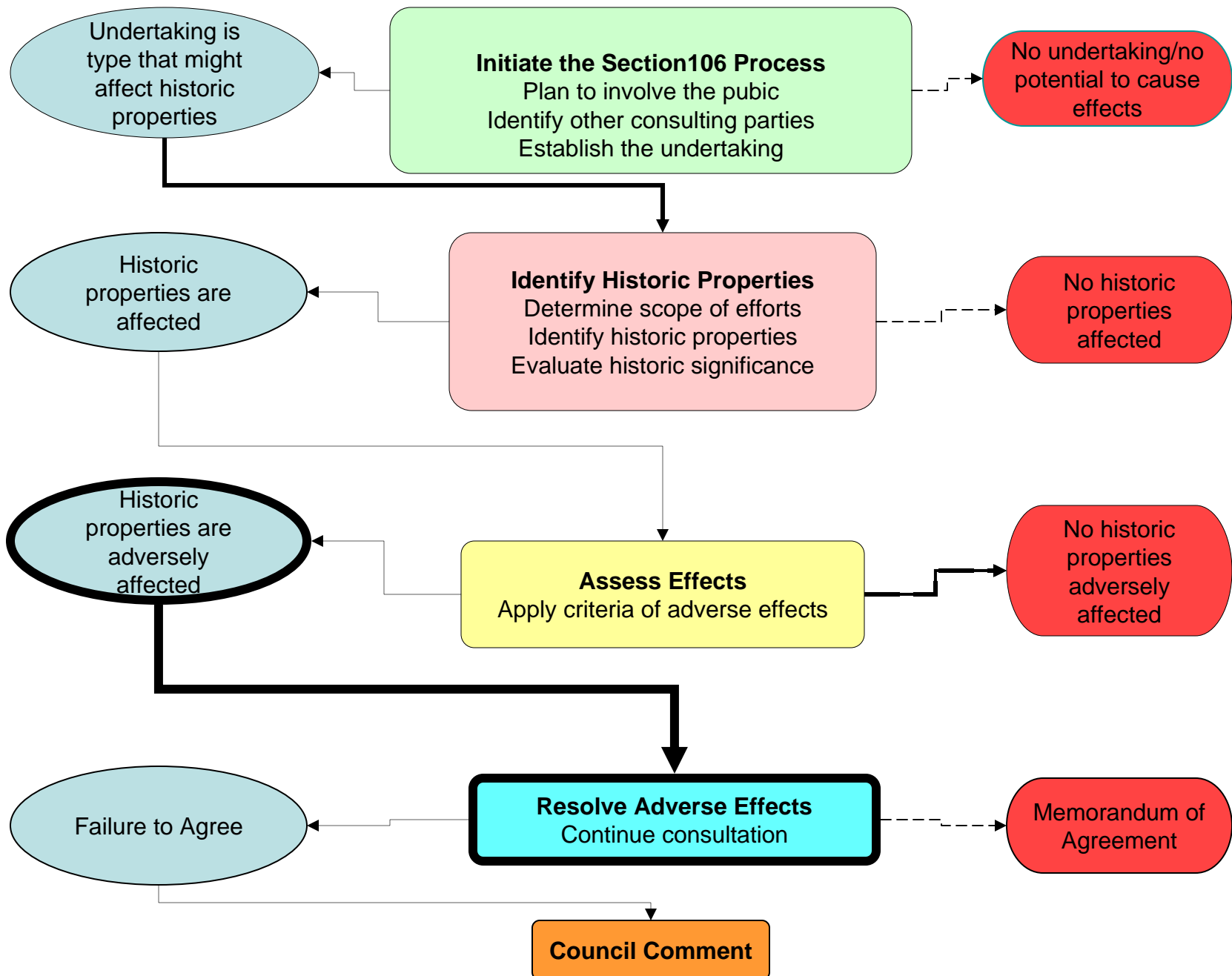
- Agency must retain records of no adverse effect findings and make them available to public
- Failure of an agency to carry out the undertaking in accordance with the finding requires the agency official to reopen the Section 106 process and determine whether the altered course of action constitutes an adverse effect.



Assessing Adverse Effects

- A finding of adverse effect requires further consultation on ways to resolve it.





Resolve Adverse Effects

- Continue consultation among the agency official, SHPO and consulting parties
- Agency official must notify ACHP when adverse effects are found and invite them to participate
 - ACHP will let agency official know within 15 days

Best Ways to Slow Down the Section 106 Process

Replacement windows are the only solution or, **we already have our minds made up!**

Section 106 consultation is part of the planning process—it is not a mitigation program

Resolve Adverse Effects

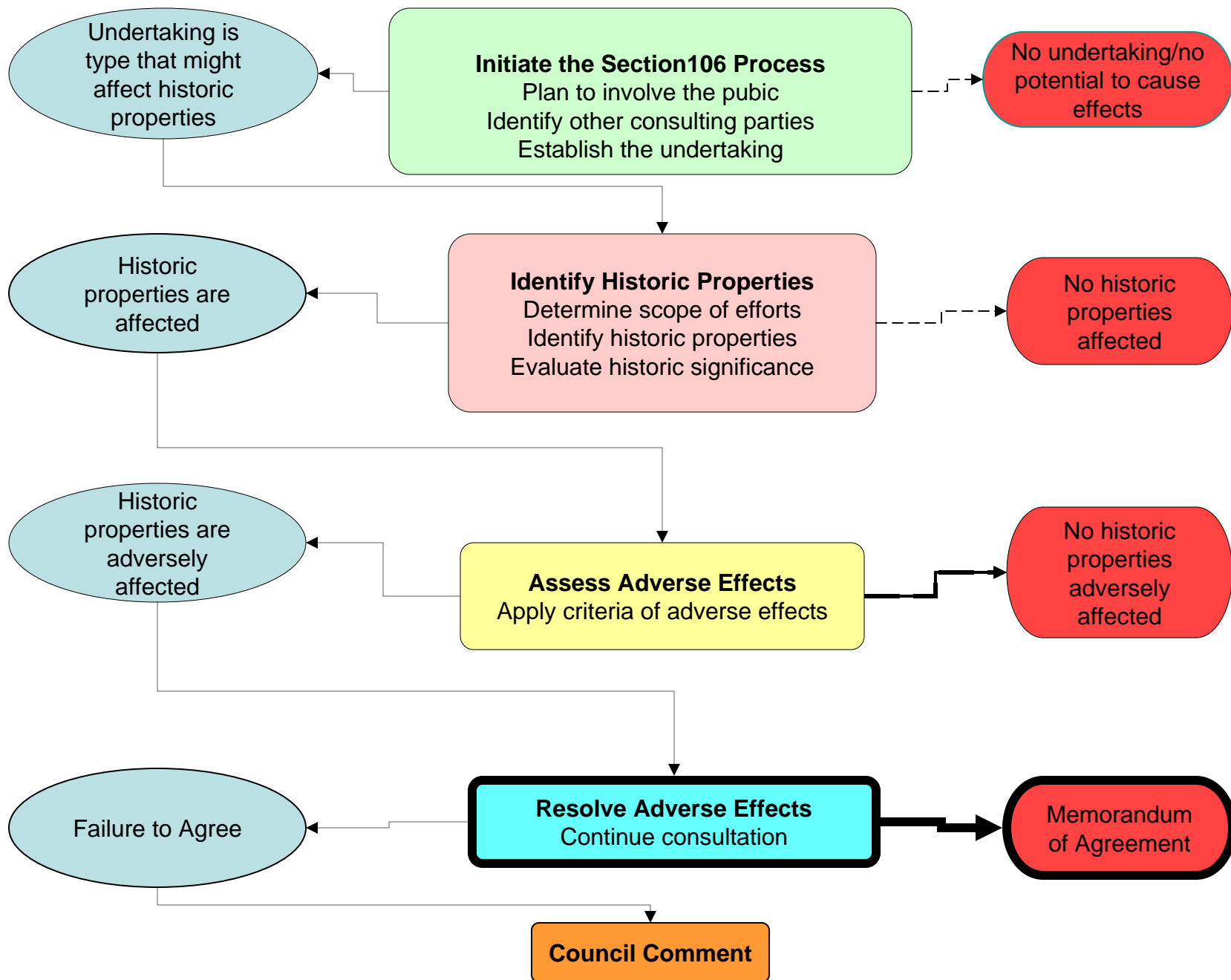
- Agency official is obligated to provide project documentation to all consulting parties at the beginning of the consultation to resolve adverse effects.
- Agency official must provide an opportunity for members of the public to express views

Resolve Adverse Effects

- Memorandum of Agreement (MOA)
 - Signatories—Agency official, SHPO, Advisory Council on Historic Preservation
 - Concurring parties—tribes, property owners, interested parties
 - Outlines terms and conditions
 - May include continued review of plans by SHPO
 - MOA does not reduce the adverse effects to a no adverse effect determination
 - Formal conclusion of the Section 106 process

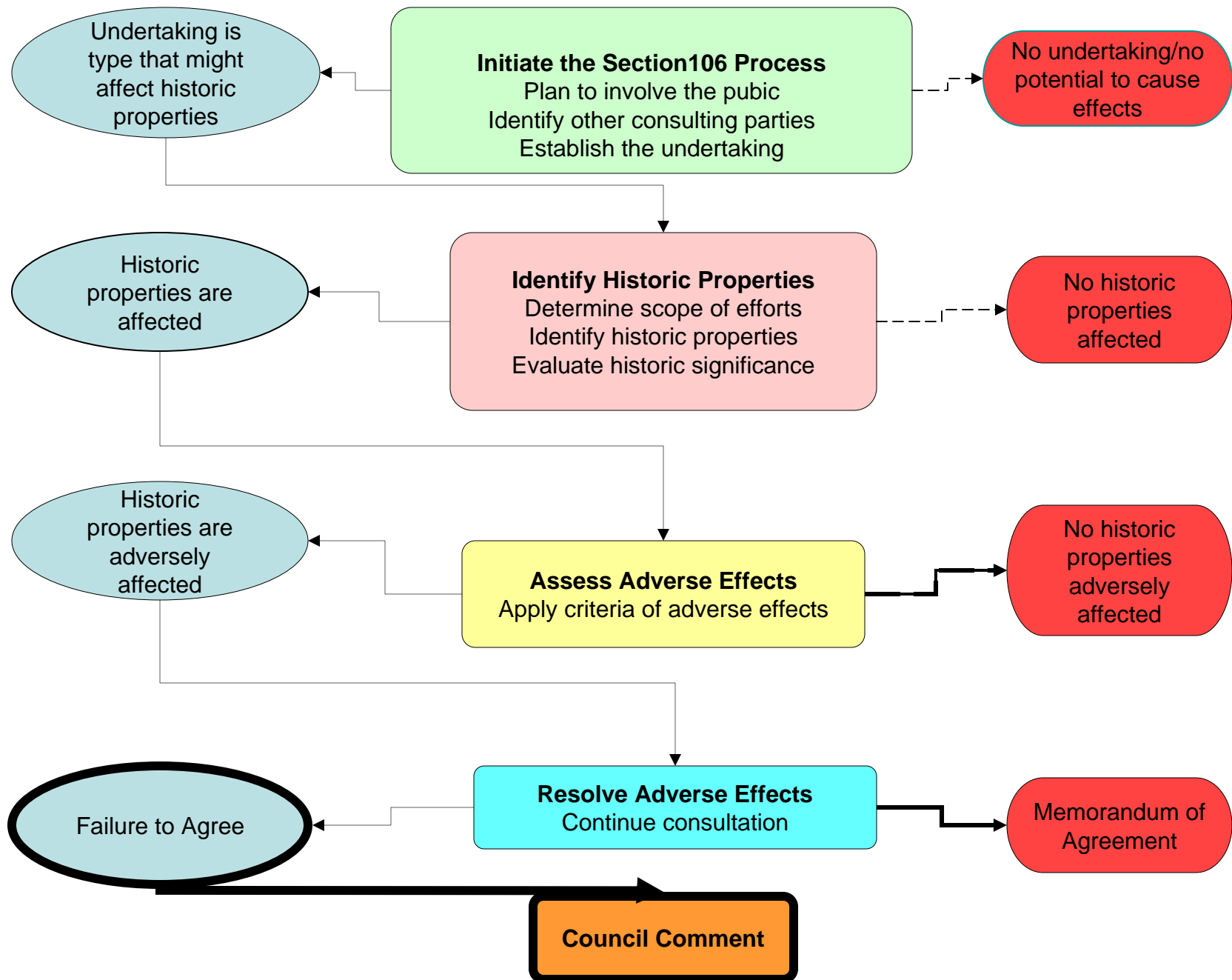
Resolve Adverse Effects

- **MEMORANDUM OF AGREEMENT**
 - **BETWEEN**
 - **THE SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY,**
 - **AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**
 - **REGARDING THE LOCKE FIRE SUPPRESSION SYSTEM PROJECT,**
 - **TOWN OF LOCKE, SACRAMENTO COUNTY,**
 - **CALIFORNIA**
- WHEREAS, the Sacramento Housing and Redevelopment Agency (SHRA) has determined that the Locke Fire Suppression System Project (Undertaking) will have an effect on the Locke Historic District, a National Historic Landmark (Locke) or on properties listed in or eligible for listing in the National Register of Historic Places (NRHP) (Historic Properties) and has consulted with the California State Historic Preservation Officer (SHPO), and has notified the Advisory Council on Historic Preservation (Council), pursuant to 36 CFR 800 regulations effective January 11, 2001 implementing Section 106 of the National Historic Preservation Act (Act) of 1966, as amended (16 U.S.C. 470f) ; and



Resolve Adverse Effects

- Failure to resolve adverse effects
 - What happens when the consulting parties cannot reach agreement?
 - ACHP provides advisory comments to the head of the agency which must be considered when the final agency decision on the undertaking is made.



More Information

- Advisory Council on Historic Preservation
 - www.achp.gov
- State Historic Preservation Officer (California)
 - www.ohp.parks.ca.gov
- California Historical Resources Information System
 - www.ohp.parks.ca.gov/default.asp?page_id=1068
- Native American Heritage Commission
 - www.ceres.ca.gov/nahc/default.htm
- National Register Information
 - www.nps.gov/history/nr/publications/bulletins/nrb15

More Information

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